

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16148 of 2021

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Rupesh Kumar S/o Nagendra Prasad R/o- Ata Chakki, Road No. 2 Deep
Nagar, Gulzarbagh, Sampatchak, Patna City, P.O.- Jhauganj, P.S.- Mehdiganj
Thana, Patna- 800008, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department,
Government of Bihar
2. The Superintendent of Police, District- Begusarai, Bihar
3. The S.H.O. Matihani P.S., District- Begusarai, Bihar
4. D.C.L.R., Begusarai, Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Arshad Alam, Anjum Perveen, Advocates
For the Respondent/s	:	Mr. Kumar Manish (Sc5)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 10-12-2021

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

“(a) To release the petitioner’s white color
Mahindra Bolera Vehicle vide Registration
No.BR01GF5902 bearing Engine
No.GHGIL57486 & Chassis
No.MAIZN2GHKGIL86188 seized vide
Matihani P.S. Case No. 92/19 dated 07.06.2019
registered u/s 420, 414, 465, 120B of the Indian
Penal Code and u/s 30(A), 32(2), 38(1) & 42(1)
of the Bihar Excise Amendment Act, 2018.

(b) Pass any other order/orders,
direction/directions as your Lordship may deem
fit & proper and for which the petitioner is found
entitled to in the facts and circumstances of the
case and in accordance with the law.”

Earlier also, petitioner had filed CWJC No.24576 of 2019, which was disposed of vide order dated 06.07.2020 with a direction to the petitioner to approach the authority concerned. Thereafter, petitioner approached the authority concerned and vide letter dated 18.02.2021 (Annexure 4), petitioner was informed that a proposal has been made to confiscate his Bolero vehicle and he was asked to file show cause by appearing on 26.02.2021, however, the said letter was received by petitioner after six months on 13.8.2021 (Annexure 5).

It is stated that confiscation proceeding being confiscation case No.175 of 2020 is pending in the court of DCLR, Begusarai in which petitioner has already appeared and petitioner shall file his show cause within 15 days, if not already filed.

It is submitted on behalf of petitioner that he is the owner of the seized vehicle which was stolen by unknown thieves on 02.06.2019 for which he has lodged FIR giving rise to Bypass P.S Case No. 143/2019 for the offence punishable under Section 379 of IPC, and same was being misused by the miscreants for transportation of illicit liquor and huge quantity of illicit liquor was recovered by the police from said stolen vehicle giving rise to Mathani P.S. Case No.92 of 2019 dated

07.06.2019.

Petitioner claims to be owner of the seized vehicle and same was stolen on 02.06.2019 for which he had earlier instituted a case as such, petitioner cannot be held to be responsible for transportation of illicit liquor, however, since the vehicle was used for transportation of illicit liquor same is liable for confiscation and confiscation proceeding has been initiated in which petitioner can take a plea that he is not responsible of being indulged in carrying illicit liquor in his vehicle as same was stolen for which he had already instituted an FIR.

In the facts and circumstances of the case, the District Magistrate/Confiscating officer Begusarai is directed to provisionally release the vehicle of petitioner after due identification of ownership of the vehicle which was stolen and subsequently recovered and seized by the police in excise case on production of ownership and registration papers with respect to vehicle in question in his name with two sureties (one local) to the extent of the value of the vehicle as indicated in the insurance document.

The petitioner while submitting the sureties shall also furnish the following affidavits/undertakings:

- (i) That the petitioner shall not indulge in creating any third party right or interest in respect of the vehicle during the pendency of the confiscation

proceeding and shall not alienate the vehicle during this period.

(ii) The petitioner shall furnish an undertaking to produce the vehicle before the confiscating authority as and when required.

(iii) Prior to release of the vehicle, a Panchanama would be prepared wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and same shall be kept on record so that in future if so required, it may be used as a secondary evidence. The petitioner shall furnish an undertaking not to challenge the said Panchanama.

The release shall be allowed within a period of 14 days from the date of submission of the sureties and the undertakings as stated above, which would however be subject to finalization of the confiscation proceeding.

With said observations and direction, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2021
Transmission Date	NA